BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard	)	GN Docket No. 16-142

REPLY COMMENTS OF SINCLAIR BROADCAST GROUP

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SUMMARY

For two decades Sinclair Broadcast Group, Inc. ("**Sinclair**") has advocated adoption of a broadcast technical standard that fully exploits the unique capabilities of the spectrum resources allocated to television broadcasting. While the comments reflect some differences of opinion over the details, they show no opposition to allowing broadcasters to bring the advanced features of ATSC 3.0 to the marketplace.

Even the multichannel video programming distributors ("**MVPDs**") and their advocates – the primary competition to television broadcasting – do not oppose authorization of ATSC 3.0. But vastly overstating the impact of ATSC 3.0 on MVPDs, from utterly false claims about patent royalties to disingenuous assertions about how their systems operate, they ask the Commission to condition approval of ATSC 3.0 on a long list of new regulations limiting broadcasters' retransmission consent rights. This is a transparent attempt to hijack this proceeding – which is about technology and innovation – and convert it into yet another referendum on retransmission consent.

Most of the MVPD's asks are rehashed versions of the same overbearing rules they have failed to secure in a decade of direct challenges to the free marketplace retransmission regime Congress adopted. For example, the Advanced Television Broadcasting Alliance ("**ATVA**") insists that the Commission require broadcasters to negotiate carriage of ATSC 3.0 signals separately, only after reaching agreement on ATSC 1.0 signals. ATVA calls this substantive limit on broadcasters a "process" rule that is within the FCC's authority. In support, ATVA very selectively quotes a paragraph from an FCC good faith bargaining order that, read in full, specifically and pointedly rejects exactly the position ATVA claims it supports. Which streams

are to be carried is a *substantive* term, and the Commission lacks authority to impose substantive limits on retransmission consent negotiations.

ATVA's claim that ATSC 3.0 will subject MVPDs to material patent royalty costs is unfounded. For example, ATVA asserts that broadcasters might require MVPDs to change out tens of millions of set-top boxes so as to pass through ATSC 3.0's more efficient video coding. This statement is preposterous: MVPDs universally transcode broadcast programs streams into the encoding technologies that are native to their own platforms. If ATSC 3.0 permits broadcasters to provide higher quality or more engaging features than MVPDs can support, they can choose whether and when to upgrade their systems to remain competitive. But the assertion that they will have to do so simply to retransmit streams broadcasters deliver in ATSC 3.0 is categorically false.

The Commission should also reject ATVA's transparently anticompetitive request to reconsider the ancillary service fee. The Commission set the rate so as not to dissuade broadcasters from using their DTV capacity to provide new and innovative services. Given the dearth of ancillary services under the existing "gross receipts" fee structure, the Commission should take this opportunity to reconsider the gross receipts approach and reduce the service fee to ensure it does not dissuade innovation.

Some commenters express concern that ATSC 3.0 could affect the repacking timeline. It will not. Sinclair continues to believe the 39-month timeline is wholly unrealistic, but ATSC 3.0 will not increase the actual time needed for repacking at all.

The Commission should reject requests of some commenters that broadcasters be treated as secondary to unlicensed white space devices. The hard capacity limits of existing stations will

be stretched during ATSC 3.0 rollout as the same stations attempt to double the number of streams they transmit with the same spectrum assignments. The Commission should make vacant channels available to broadcasters, or to groups of broadcasters, on a temporary basis to improve service to consumers during the transition.

TABLE OF CONTENTS

PAGE

I. INTRODUCTION 1

II. DISCUSSION 2

A. Signal Carriage Issues 2

1. ATVA and the MVPDs Vastly Overstate the Costs and Burdens of ATSC 3.0 on MVPDs 3
2. The Commission Should Reject MVPDs' Requests to Convert This Proceeding Into a Restructuring of Retransmission Consent 4
3. The Commission Should Not Impose Arbitrary and Prohibitive Conditions on ATSC 3.0 Deployment to "Protect" MVPDs 9
4. MVPDs Will Face No Exposure to Patent Costs and the Commission Lacks Authority to Regulate Intellectual Property 10

B. Other Issues 12

1. The Commission Should Reduce the Ancillary Service Fee 12
2. ATSC 3.0 Will Not Impact the Repacking Timeline 13
3. Broadcasters Should Be Allowed to Use Vacant Channels to Minimize Disruption to Viewers 13

III. CONCLUSION 14

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I. INTRODUCTION

For two decades Sinclair Broadcast Group ("**Sinclair**") has advocated adoption of a standard for digital broadcasting in the United States that is designed from the ground up to support both mobile and fixed reception. Communications, including television programming, transmitted via "airwaves" can serve many purposes that "wireline" communications cannot. Chief among these are the abilities to reach any and all points in wide geographic areas and to serve users who are not connected to wires. The digital television standard approved by the FCC two decades ago, which is now mandatory for all broadcasters, is for all practical purposes limited to providing service to fixed locations. This is unfortunate, because most residential locations are well served by three or more multichannel video distribution platforms, none of which can provide service to all points in an area or to mobile receivers. ATSC 3.0 will finally allow broadcasters to take full advantage of the capabilities of the spectrum they use.

Free over-the-air television service today is a shadow of what is possible with more capable technology. Although disappointed that neither the industry nor the Commission embraced an OFDM modulation for the first generation of digital broadcasting, Sinclair has invested in and advocated for more capable technology almost non-stop. Most recently, Sinclair was a prime mover in getting the process of developing a new television broadcast standard

underway several years ago, and Sinclair has invested well over $30 million developing ATSC 3.0 and planning for its deployment.

Sinclair strongly supports the Commission's proposal to authorize permissive use of ATSC 3.0 and urges the Commission to move swiftly to do so. The opening comments do not reflect any opposition to allowing broadcasters to innovate and improve their services. The comments do reflect some differences of opinion regarding some of the questions posed in the NPRM, and some MVPDs ask the Commission to revamp the retransmission consent rules through this proceeding. In these replies Sinclair responds to some of the positions advocated in opening comments.

II. DISCUSSION

A. Signal Carriage Issues

The American Television Alliance ("**ATVA**"), along with several pay television service operators and others representing their interests[1], implore the Commission to use this proceeding to impose hard conditions on broadcasters transitioning to ATSC 3.0. Under the euphemism of "protecting MVPD viewers,"[2] these commenters ask the Commission to impose onerous and unwarranted conditions on broadcasters that, at best, would slow the progress of ATSC 3.0 deployment and, at worst, might chill it completely in some cases. Indeed, the complaints and requests of MVPDs for special regulatory favors are so extensive and numerous one could be

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[1] *See also*, Comments of: NCTA – The Internet & Television Association, GN Docket No. 16-142 (filed May 9, 2017); NTCA – The Rural Broadband Association, GN Docket No. 16-142 (filed May 9, 2017); American Television Alliance, GN Docket No. 16-142 (filed May 9, 2017) ("**ATVA Comments**"); American Cable Association, GN Docket No. 16-142 (filed May 9, 2017); Independent Telephone & Telecommunication Alliance, GN Docket No. 16-142 (filed May 9, 2017); DISH Network, L.L.C., GN Docket No. 16-142 (filed May 9, 2017); AT&T services Inc., GN Docket No. 16-142 (filed May 9, 2017); Verizon, GN Docket No. 16-142 (filed May 9, 2017); Mediacom Communications Corporation, GN Docket No. 16-142 (filed May 9, 2017); Midcontinent Communications, GN Docket No. 16-142 (filed May 9, 2017); and WTA – Advocates for Rural Broadband, GN Docket No. 16-142 (filed May 9, 2017) (together "**MVPDs**").

[2] *See, e.g.,* ATVA Comments at 3.

forgiven for believing the purpose of this docket is to consider retransmission consent reform rather than to release broadcasters from the regulatory straightjacket that requires them to use a transmission standard that is two decades old.

Pervading ATVA's and the other MVPD's comments is the notion that ATSC 3.0 will be a boon to broadcasters but will only mean new costs and other burdens for MVPDs and consumers, and therefore broadcasters should cover all costs of all MVPDs that arguably might result from the launch of ATSC 3.0. The basic premise of this – that the government should require one industry to insulate another from the impacts of technical innovation – is fundamentally at odds with the Commission's mandate to serve the public interest by, among other things, facilitating innovation in services the Commission regulates. And in any case, the Commission lacks authority to force broadcasters (or anyone else) to subsidize MVPD equipment or operations.

1. ATVA and the MVPDs Vastly Overstate the Costs and Burdens of ATSC 3.0 on MVPDs

Although the costs and burdens that may or may not affect MVPDs incidental to innovation in the broadcast television service are irrelevant to the question of whether ATSC 3.0 should be authorized, we note that ATVA and the MVPDs immensely overstate the alleged costs and burdens. For example, there will be no need for MVPDs to purchase thousands of new receivers, decoders, demultiplexers or new antennas. Many, if not most, television stations already transmit multiplexed streams in addition to their primary streams, and much, if not most, MVPD reception equipment is already multi-stream capable. Moreover, when some stations transition to ATSC 3.0, the ATSC 1.0 receivers and demultiplexers previously used for those stations can be repurposed to receiving any new streams from the ATSC 1.0 host station. And in many, if not most, cases the fact that broadcasters collectively will face significant capacity

shortages while simulcasting will mean that ATSC 1.0 simulcasts will not be new streams but rather will replace other ATSC 1.0 multicasts. Similarly, the MVPD's concern that some of them may not be able to receive a good quality signal from a host ATSC 1.0 facility is unwarranted. MVPDs typically locate their receive facilities so that they can easily receive the over-the-air signals of all local stations. If they do not, they have already made arrangements to receive signals via alternative means.

The MVPD's concerns about the costs of receiving and distributing ATSC 3.0 signals are also both overstated and misplaced. It is true that MVPDs will need new equipment in order to receive and transcode ATSC 3.0 streams, just as broadcasters will need new equipment to transmit them. Capital expenditures to keep pace with technical innovation are an unavoidable aspect of operating digital video distribution systems. Supposed "capacity constraints" are speculative and unlikely, and in any case, not a matter for regulatory intervention. The most likely scenario during the period of transition to ATSC 3.0 is that both the total number of broadcast streams and the resolution of some of those multicast streams will be *lower* than they are today, by virtue of the fact that much of the available over-the-air broadcast capacity will be used for simulcasting. The suggestion that MVPDs *en masse* will be required to purchase and install new antennas, ATSC 1.0 decoders and demultiplexers, undertake extensive tower work, and make other changes, is wildly overblown.[3]

2. The Commission Should Reject MVPDs' Requests to Convert This Proceeding Into a Restructuring of Retransmission Consent

After painting a largely false picture of the real impact of ATSC 3.0 on MVPDs, the MVPDs argue that these supposedly onerous costs and conditions justify that a laundry list of

[3] ATVA also raises "Chicken Little" alarms that MVPDs will incur initial and ongoing patent licensing costs when broadcasters launch ATSC 3.0 service. They will not. We address those unfounded assertions below.

limits be placed on broadcasters in retransmission consent negotiations. ATVA, for example, asks the Commission to go even further and impose a wide range of additional burdensome obligations on broadcasters to pay costs of MVPD operations as a condition of simply launching ATSC 3.0 transmissions. Although euphemistically characterized as requirements to "protect MVPD subscribers,"[4] these are barely disguised requests that the Commission use this proceeding to adopt entirely new regulations that benefit MVPDs at the expense of broadcasters, completely re-shaping the regulatory framework for redistribution of broadcast signals by MVPDs. Neither of these things is warranted, and the Commission does not have authority to do either one.[5]

While most parties see innovation as a good thing, the MVPDs argue that ATSC 3.0 will wreak havoc in the television marketplace, leading broadcasters to exert their supposedly overwhelming leverage in retransmission negotiations to force carriage of unwanted signals and cause blackouts of broadcast signals by MVPDs. Neither is the case. We reject the premise that this proceeding is an appropriate forum to reconsider the Commission's regulation of retransmission consent.

ATVA, for example, devotes several pages to rehashing shopworn arguments that broadcasters enjoy "tremendous" leverage in retransmission negotiations against all MVPDs[6] which unconstrained, will lead to forced carriage of unwanted signals and blackouts. Relative leverage is, of course, a matter of perspective. The four largest MVPDs together account for more than four out of five MVPD households. The smallest of these is more than *five times* as

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[4] ATVA Comments at 51.

[5] One of the MVPDs' motives for seeking new constraints and obligations on broadcasters is transparent: they want the government to intercede in private negotiations to help them get a critical input to their for-profit business enterprises at a substantial discount to market rates. Other motives are less obvious. The prospect that ATSC 3.0 will make over-the-air television better is a significant concern for MVPDs, which compete with broadcasters.

[6] ATVA Comments at 19.

large as Sinclair, measured by both market capitalization and revenue. ATVA argues that rising retransmission consent rates are conclusive evidence that broadcasters enjoy excessive leverage in negotiations. From Sinclair's perspective, the fact that rates are still rising means that 25 years after passage of the Cable Act of 1992, massive MVPDs have yet managed to throttle broadcasters' efforts to reach market equilibrium and find the fair market value of their signals. Broadcasters were not paid at all for more than half of that time and are still working to close the gap with pay channels, which cost vastly more per viewing hour.

ATVA argues that broadcasters will be able to "compel" MVPDs to carry ATSC 3.0 signals. As evidence, it bizarrely alleges that Sinclair has coerced various MVPDs to carry the Tennis Channel against their will and without "offering something of value in exchange."[7] This statement is unsubstantiated hearsay (which, if true, would violate confidentiality terms that are included in all retransmission consent agreements). We doubt any of the management of the MVPDs backing ATVA would report to their shareholders (or state in their public filings) that they had entered into a significant commercial agreement *without getting anything of value in exchange*. Such an outlandish assertion could only be made indirectly, through the proxy of an advocacy group filing comments.

Parties engaging in retransmission consent negotiations routinely trade off non-cash terms, including carriage of other programming or television stations and rights to carry broadcast and non-broadcast programming on distribution systems that are not traditional MVPD platforms. Broadcasters seek carriage of multicasts or non-broadcast programming. MVPDs push back and refuse to carry some multicasts or other programming, even refusing to carry streams that include substantial local news and public affairs programming. Sometimes MVPDs

[7] ATVA Comments at 23.

insist on rights to carry broadcast programming the broadcaster does not wish to make available for retransmission. Broadcasters always want MVPDs to carry programming without degradation. MVPDs consistently demand rights to further compress it. Broadcasters want rights to viewing data. MVPDs often refuse to provide it. Each party wants the other to be responsible for signal delivery, and this obligation is traded off one way or the other in virtually every deal. MVPDs demand rights to carry network signals outside of the home stations' market (often without compensation)[8] and rights to carry broadcast signals on over-the-top ("**OTT**") and TV Everywhere platforms, whether broadcasters have those rights or not. MVPDs have been known to force blackouts on their systems over OTT rights alone. MVPDs seek rights to store broadcast programming in cloud DVRs or to allow their subscribers to transfer broadcast programming from DVRs to other devices.

These and many other non-cash terms are horse-traded back and forth in retransmission consent negotiations every day. The issues change from cycle to cycle, some becoming irrelevant and others emerging or becoming more important. Here, ATVA and other MVPDs ask the Commission to isolate *one* such issue – carriage of ATSC 3.0 signals – and require that that one issue be negotiated in an entirely separate transaction. There is no precedent for this, and the implications of ATVA's ask reveal why creating such a precedent would be unwise even if the Commission had authority to do so. By isolating one non-cash term and requiring that it be negotiated separately, the Commission would give a dispositive advantage to one side or the other with respect to that particular term. Of course, this is precisely what ATVA wants in this case. But neither ATVA nor other MVPDs has offered any criteria for choosing which terms

[8] The ATVA assertion that a broadcaster can force a MVPD to revamp its distribution plant to use high efficiency video coding (H.265) – a different form of video compression – is belied by the fact that cable operators routinely refuse to implement addressability so that systems that straddle two DMAs can send each subscriber the correct, in-market television station.

should be so isolated, other than the one term they present here. Any broadcaster could also nominate terms it would prefer be negotiated separately. But doing so would skew the market, prohibiting parties from finding the best tradeoffs among the many complex issues that are routinely negotiated.

In any case, the Commission lacks authority to micromanage the terms of retransmission consent agreements. ATVA and the MVPDs argue that requiring broadcasters to negotiate ATSC 3.0 carriage *a la carte* from other terms amounts to a "process" requirement, and that Congress intended the FCC "to enforce the *process* of good faith negotiation."[9] But, of course, the list of program streams (broadcast or otherwise) that are carried pursuant to a retransmission consent agreement is entirely a substantive term. And it is exactly the sort of substantive term that the Commission plainly distinguished from "process" in the very same paragraph ATVA quotes in support of the proposition that ATSC 3.0 carriage should be negotiated separately as a "process" matter within the FCC's authority. Here is the full quote, which says exactly the opposite of what ATVA asserts:

> Consistent with our determination that Congress intended that the Commission should enforce the process of good faith negotiation and that the substance of the agreements generally should be left to the market, *we will not adopt the suggestions of certain commenters that we prohibit proposals of certain substantive terms, such as offering retransmission consent in exchange for the carriage of other programming such as a cable channel, another broadcast signal, or a broadcaster's digital signal*. Instead, we believe that the good faith negotiation requirement of SHVIA is best implemented through the following standards derived from NLRB precedent, commenter's proposals and the Section 251 interconnection requirements. These standards are intended to identify those situations in which a broadcaster did not enter into negotiations with the sincere intent of trying to reach an agreement acceptable to both parties.[10]

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[9] ATVA Comments at 52 (emphasis in ATVA Comments).

[10] *Implementation of the Satellite Home Viewer Improvement Act of 1999*, 15 FCC Rcd. 5445 ¶ 39 (2000) (emphasis added).

Remarkably, to support its argument that the Commission has authority to prohibit broadcasters from seeking carriage of ATSC 3.0 signals in retransmission consent negotiations, ATVA cites a passage in which the Commission expressly identified such terms as "substantive" and rejected MVPD requests to prohibit them. The Commission long ago settled the question of its authority to regulate the substantive terms of retransmission consent agreements, and there is no reason to re-consider that decision today.

ATVA goes even further, asking the Commission to invalidate provisions of *existing* retransmission consent agreements that may affect carriage of ATSC 3.0.[11] The Commission has no authority to do this. ATVA also points to Sinclair's earlier statement in this proceeding that it recognizes that MVPDs cannot retransmit ATSC 3.0 streams in their native High Efficiency Video Coding ("**HEVC**" or "**H.265**") format because most MVPD systems today do not use HEVC.[12] Some of the MVPDs proffer claimed evidence that contradicts this.[13] Sinclair, however, merely stated that it recognizes that MVPDs in fact cannot pass HEVC today.[14] The point, however, should not be lost: carriage of ATSC 3.0 content is but one element of a litany of items fully negotiable by MVPDs with immense power and savvy negotiators who demand and receive consideration in exchange.

3. The Commission Should Not Impose Arbitrary and Prohibitive Conditions on ATSC 3.0 Deployment to "Protect" MVPDs

ATVA and the MVPDs ask the Commission to impose a range of conditions and obligations on broadcasters seeking to launch ATSC 3.0 service. MVPDs' stakes in some of

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[11] ATVA Comments at 28-30.

[12] *Id.* (citing Letter from Rebecca Hanson to Marlene Dortch, GN Docket No. 16-142, at 1 (filed Dec. 13, 2016)).

[13] *See, e.g.*, Comments of DISH Networks L.L.C. at 4-5.

[14] The complaint of MVPDs that they will be forced to change out their set-top boxes and pay monthly per-subscriber patent royalties if broadcasters transition to ATSC 3.0 is a wholesale fabrication with no basis in fact whatsoever. *See* discussion at pages 10-11, *infra*.

these requests, beyond a desire to stall improvements in over-the-air broadcast services with which they compete, is impossible to discern. ATVA, for example, asks the Commission to mandate that ATSC 1.0 simulcasts maintain the same picture quality and exact coverage areas that they have today. It argues that broadcasters may not have "sufficient incentives" to do so without a government mandate. This is a hard argument for Sinclair to accept when, for more than 20 years, Sinclair has championed expanding broadcast coverage as far as possible and providing the highest technical quality broadcasts. Indeed, Sinclair's aggressive support of ATSC 3.0 and its desire to launch Next Gen service are driven by its desire to continue to extend coverage (through single frequency networks) and the overall quality of its television service.

Sinclair accepts, as all parties must, that many tradeoffs will have to be made during the period of simulcasting. Absent a companion transition channel for every station, compromises are inevitable. The conditions ATVA and the MVPDs seek would severely throttle launch of ATSC 3.0 service in all markets and would prevent it completely in some. There is no policy basis for doing so, and many of the MVPD asks would require the Commission to reverse long-settled rules.[15] The Commission should decline the invitation to do so.

4. MVPDs Will Face No Exposure to Patent Costs and the Commission Lacks Authority to Regulate Intellectual Property

In an effort to persuade the FCC to restructure the good faith bargaining rules and impose certain hard obligations on broadcasters, ATVA materially misrepresents both the general patent licensing environment and the way MVPDs retransmit broadcast signals. For example, ATVA asserts that MVPDs purchasing ATSC 3.0 receivers will incur patent royalty costs for their decoders/demultiplexers at their receive facilities. In reality, patent royalty costs, if any, are

[15] ATVA curiously asserts that broadcasters should be prohibited from changing the bandwidth they devote to their program streams, even while agreeing that broadcasters are not required to assign any particular bandwidth to their program streams. *See* ATVA Comments at 36.

embedded in the cost of that hardware and rarely represent a material portion of the cost of commercial/industrial electronics.

ATVA pushes the limits of credulity, though, when it argues that a broadcaster transitioning to ATSC 3.0 will force MVPDs to upgrade all of their "set top boxes" or other subscriber equipment and will result in ongoing per-subscriber royalties.[16] It is true that one portion of the ATSC 3.0 suite of standards specifies the new HEVC video coding standard. It is also true that some holders of allegedly standard-essential HEVC patents have proposed monthly subscription royalties, even as several standard-essential patent holders have flatly rejected this approach. But these facts have no relevance to *broadcaster's* use of HEVC, because MVPDs always transcode the transport streams they receive from broadcasters into the digital video codecs native to their own systems. The ATVA's comments actually acknowledge elsewhere that MVPDs will transcode HEVC streams, revealing the disingenuousness of this argument: "**New Transcoders**. Existing equipment cannot transcode H.265 video streams. MVPDs would thus have to acquire equipment to do so."[17]

If MVPDs choose voluntarily to implement HEVC in their own systems, only *then* would they potentially be required to upgrade set-top boxes. And *if* in doing so MVPDs assent to monthly per-subscriber royalties sought by some of the parties claiming to hold HEVC standard-essential patents, *only then* would they be subject to such costs. Those decisions are *entirely* up to the MVPDs. They have *nothing whatsoever* to do with MVPD retransmission of programming the MPVDs initially receive in ATSC 3.0 transport streams. The implication that a broadcaster would condition retransmission consent on a MVPD changing out a significant

[16] ATVA Comments at 10-11.
[17] ATVA Comments at 11.

portion of its infrastructure – including all of its set-top boxes – just so it could pass through a native HEVC stream without transcoding is preposterous.

Because MVPDs will not face any material patent licensing costs resulting from launch of ATSC 3.0, there is no reason for the Commission to adopt any mitigating rules or conditions. Moreover, beyond iterating that authorization of ATSC 3.0 is based in part on the ATSC's RAND licensing policy, the Commission has no authority to regulate royalty licensing. Sinclair is not aware of any dispute that the ATSC's RAND licensing obligations apply to all ATSC 3.0 standard-essential patents.[18]

B. Other Issues

1. The Commission Should Reduce the Ancillary Service Fee

In a tacit concession that its main goal in this proceeding is an anticompetitive desire to create disincentives to broadcasters to transition to ATSC 3.0 or to increase their costs, ATVA asks the Commission to "adjust" the ancillary service fee applicable to digital broadcasting.[19] ATVA argues that the fees were last adjusted eighteen years ago and that they therefore should be adjusted now. We note, however, that the fee structure imposed on ancillary and supplementary services mandated by Congress was in part established to "prevent unjust enrichment."[20] The rate set by the Commission was intended not to dissuade broadcasters from using their DTV capacity to provide new and innovative services that can greatly benefit consumers.[21] That rate was set without benefit of any real-world experience and was not a function of any cogent economic analysis. Since broadcasters voluntarily deploying the Next

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[18] ATVA Comments at 45-49.

[19] ATVA Comments at 49-50.

[20] *See* 47 U.S.C. § 336(e)(2)(a).

[21] *See Fees for Ancillary or Supplementary Use of Digital Television Spectrum Pursuant to Section 336(e)(1) of the Telecommunications Act of 1996, Report and Order*, 14 FCC Rcd 3259 at ¶ 17 (1998).

Gen standard will assume all costs associated with the deployment and will assume all business risks in providing these innovative services, the rationale for a significant payment to the government associated with gross revenues of ancillary services requires reassessment. The Commission should take this opportunity to ***reduce*** this requirement substantially and ensure that it truly does not dissuade innovation. Indeed, the Commission noted in adopting the fee that, once digital television licensees have implemented ancillary or supplementary services, the Commission and the licensees will have a better concept of what these services might include and of the profit-making capacity of these services and report its findings to Congress as required. This is an appropriate time for that reassessment.

2. ATSC 3.0 Will Not Impact the Repacking Timeline

Several parties addressed the impact (or potential impact) of deployment of ATSC 3.0 on the post-incentive auction repacking environment. T-Mobile urges the Commission to ensure that ATSC 3.0 does not impact the repacking timeline and that the transition be completed within the allotted 39 months.[22] We agree with the several commenters who observed that ATSC 3.0 will not affect the repacking timeline at all,[23] and there is no reason for the Commission to impose any special conditions on ATSC 3.0 stations in connection with the transition.[24]

3. Broadcasters Should Be Allowed to Use Vacant Channels to Minimize Disruption to Viewers

The comments reflect the many challenges broadcasters will face in attempting to replicate their services in both ATSC 1.0 and ATSC 3.0 during the period of transition. Stations that simulcast from two different locations will not be able to provide identical coverage areas in

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[22] *See* Comments of T-Mobile USA, Inc., GN Docket No. 16-142, at 4 (filed May 9, 2017).

[23] *See, e.g.,* Comments of America's Public Television Stations, The AWARN Alliance, The Consumer Technology Association, and the National Association of Broadcasters, GN Docket No. 16-142, at 23-24 (filed May 9, 2017).

[24] Sinclair continues to believe that the 39-month deadline is unrealistic, but that view is not based on any factors unique to ATSC 3.0 deployment.

using both transmission standards. Stations may not be able to replicate all streams or all streams in identical formats in both standards. The hard capacity limits of existing stations will be stretched as the same stations attempt to essentially double the number of streams they transmit with the same spectrum assignments. The Commission should, therefore, make vacant channels available to broadcasters, or to groups of broadcasters, on a temporary basis to improve service during the transition. Consumers will be the ultimate beneficiaries of the vast improvements ATSC 3.0 will bring, but the Commission should also make all tools available to minimize consumer disruption during the period of transition.

III. CONCLUSION

ATSC 3.0 will bring extraordinary innovation to a core national communications service. The Commission should expeditiously authorize broadcasters to use it and allow broadcasters wide flexibility to implement it. The Commission should categorically reject the requests of MVPDs to put obstacles in the way of ATSC 3.0 deployment to slow it down and their efforts to use this proceeding as a proxy to overhaul retransmission consent regulation.

Respectfully submitted,

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